

David A. Carroll, Esq. (NSB #7643)
dcarroll@rrsc-law.com
 Anthony J. DiRaimondo, Esq. (NSB #10875)
adiraimondo@rrsc-law.com
 Robert E. Opdyke, Esq. (NSB #12841)
ropdyke@rrsc-law.com
RICE REUTHER SULLIVAN & CARROLL, LLP
 3800 Howard Hughes Parkway, Suite 1200
 Las Vegas, Nevada 89169
 Telephone: (702) 732-9099
 Facsimile: (702) 732-7110
Attorneys for Defendant Jerritt Canyon Gold LLC

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

NEVADA SELECT ROYALTY, INC.,

Plaintiff,

vs.

JERRITT CANYON GOLD LLC,

Defendant.

Case No.

NOTICE OF REMOVAL

JERRITT CANYON GOLD LLC,

Counter-claimant,

vs.

NEVADA SELECT ROYALTY, INC., and
 NOUHGT TECHNOLOGIES, LLC,

Counter-defendants.

Pursuant to 28 U.S.C. § 1295(a), 28 U.S.C. § 1331, 28 U.S.C. § 1338(a), 28 U.S.C. § 1367,
 28 U.S.C. § 1441(a), 28 U.S.C. § 1446, and 28 U.S.C. § 1454, Defendant/Counter-claimant Jerritt
 Canyon Gold LLC (“Defendant”) hereby provides notice of removal of the state court action
Nevada Select Royalty, Inc. v. Jerritt Canyon Gold LLC, Nevada Fourth Judicial District Court
 Case No. DC-CV-22-80, to the United States District Court for the District of Nevada, Reno

1 Division. Removal is appropriate under the Leahy-Smith America Invents Act (“AIA”) of 2011,
2 Pub L. 112-29, 125 Stat. 284. In support of removal, Defendant states as follows:

3 1. Plaintiff filed its Complaint in Nevada state court based on Defendant’s alleged use
4 of a United States Patent in mining operations. *See Complaint* at ¶¶ 3, 12-16, 24. Specifically,
5 Plaintiff claims that it was assigned the royalties from a license agreement for the exclusive use of
6 United States Patent No. 8,877,148 purportedly assigned to NouHgt Technologies, LLC, and that
7 Defendant has ceased paying royalties under the license. *Id.* Copies of the Summons and Complaint
8 are attached hereto as “**Exhibit A.**”
9

10 2. Defendant has filed an Answer and Counterclaims in the Nevada state court action
11 including counterclaims based on patent non-infringement, patent invalidity, and patent misuse.
12 Defendant has not yet received a conformed copy of its Answer and Counterclaims, but has attached
13 a true and correct copy of the filed document hereto as “**Exhibit B.**” Defendant will supplement the
14 file in this federal action with a conformed copy of its Answer and Counterclaims as soon as it is
15 received from the Nevada state court.
16

17 3. Federal district courts possess “original jurisdiction of all civil actions arising under
18 the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331.

19 4. Pursuant to the AIA, 28 U.S.C. § 1338(a), the federal district courts “have original
20 jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety
21 protection, copyrights and trademarks.” Moreover, “[n]o State court shall have jurisdiction over
22 any claim for relief arising under any Act of Congress relating to patents, plant variety protection,
23 or copyrights.” *Id.*
24

25 5. Also under the AIA, 28 U.S.C. § 1454(a), “[a] civil action in which any party asserts
26 a claim for relief arising under any Act of Congress relating to patents, plant variety protection, or
27 copyrights may be removed to the district court of the United States for the district and division
28 embracing the place where the action is pending.” *See also* 28 U.S.C. § 1441(a) (“Except as

1 otherwise expressly provided by Act of Congress, any civil action brought in a State court of which
2 the district courts of the United States have original jurisdiction, may be removed by the defendant
3 or the defendants, to the district court of the United States for the district and division embracing
4 the place where such action is pending.”).

5 6. Further under the AIA, the United States Court of Appeals for the Federal Circuit
6 has been granted “exclusive jurisdiction” over an appeal from “any civil action in which a party has
7 asserted a compulsory counterclaim arising under, any Act of Congress relating to patents or plant
8 variety protection.” 28 U.S.C. § 1295(a).

9 7. In sum, the AIA was “intended to provide federal courts . . . with a broader range of
10 jurisdiction; that is, with jurisdiction over claims arising under the patent laws even when asserted
11 in counterclaims, rather than in an original complaint. At the same time, the changes to § 1338
12 expressly remove such claims from the ambit of state court jurisdiction.” Vermont v. MPHJ Tech.
13 Invs., LLC, 803 F.3d 635, 644 (Fed. Cir. 2015) (emphasis in original).

14 8. Claims for patent invalidity qualify as compulsory counterclaims in response to a
15 claim arising under patent law. In re Rearden LLC, 841 F.3d 1327, 1331 (Fed. Cir. 2016).

16 9. Under 28 U.S.C. § 1367(a), federal district courts may exercise supplemental
17 jurisdiction “over all other claims that are so related to claims in the action within such original
18 jurisdiction that they form part of the same case or controversy under Article III of the United States
19 Constitution.”

20 10. Plaintiff’s claims, while styled as contract claims, necessarily arise under the federal
21 patent that formed the basis of the pertinent contractual dealings and assignment thereof. In
22 addition, the Amended License Agreement which forms the primary basis for Plaintiff’s claims,
23 stated that the parties consented to exclusive jurisdiction in the federal courts located in Nevada.
24 Moreover, Defendant’s compulsory counterclaims demonstrate that this matter cannot be
25 adjudicated without evaluation and determination of the patent.
26
27
28

1 11. The Nevada state courts expressly lack jurisdiction to adjudicate the claims and
2 counterclaims under 28 U.S.C. § 1338.

3 12. Instead, original and exclusive jurisdiction over such claims and counterclaims lies
4 within the United States District Courts. Id.

5 13. Defendant received the Summons and Complaint on August 16, 2022.

6 14. As of the date of this filing, no pleadings, motions, or papers other than the
7 Summons, Complaint, and Answer have been filed in the state court civil action.

8 15. Defendant has hereby satisfied the requirement of filing “in the district court of the
9 United States for the district and division within which such action is pending a notice of removal
10 . . . containing a short and plain statement of the grounds for removal, together with a copy of all
11 process, pleadings and orders served upon such defendant.” See 28 U.S.C. § 1446(a).

12 16. Defendant’s Notice of Removal is timely filed within 30 days after receipt of the
13 initial Complaint per 28 U.S.C. § 1446(b); in addition, 28 U.S.C. § 1454(b)(2) allows extension of
14 these time limits for removal of patent cases “at any time for cause shown.”
15

16 17. Per 28 U.S.C. § 1446(d), a copy of this Notice of Removal, together with all exhibits,
17 is being promptly filed in the Nevada Fourth Judicial District Court.
18

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

WHEREFORE, Defendant gives notice that the above-referenced action, *Nevada Select Royalty, Inc. v. Jerritt Canyon Gold LLC*, Nevada Fourth Judicial District Court Case No. DC-CV-22-80, is hereby removed to the United States District Court for the District of Nevada, Reno Division, pursuant to the federal statutes and authorities cited herein, and Defendant requests that this Court retain jurisdiction for all further proceedings in this matter.

DATED this 15th day of September, 2022.

RICE REUTHER SULLIVAN & CARROLL, LLP

By: /s/ Robert E. Opdyke

David A. Carroll, Esq. (NSB #7643)

Anthony J. DiRaimondo, Esq. (NSB #10875)

Robert E. Opdyke, Esq. (NSB #12841)

3800 Howard Hughes Parkway, Suite 1200

Las Vegas, Nevada 89169

Attorneys for Defendant Jerritt Canyon Gold LLC

INDEX OF EXHIBITS

Exhibit	Description
A	Summons and Complaint
B	Answer and Counterclaims

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September 2022, I authorized the electronic filing of the foregoing **NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the email address(es) denoted on the attached Electronic Mail Notice List as follows:

Laura K. Granier, Esq. (NBS #7357)
Jessica L. Freitas, Esq. (NBS #16079)
HOLLAND & HART, LLP
5441 Kietzke Lane, Suite 200
Second Floor
Reno, NV 89511-2094
Tel: (775) 327-3000
Fax: (775) 786-6179
lkgranier@hollandhart.com
jlfreitas@hollandhart.com

Attorneys for Nevada Select Royalty, Inc.

/s/ Robert E. Opdyke
An Employee of Rice Reuther Sullivan & Carroll, LLP